IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7885 OF 2004

M/s. Shereman's Private
Limited, a company registered
under the Companies Act,
Shop Nos.1 and 2, 86-B,
Dr. Babasaheb Ambedkar Marg,
Chinchpokli, Mumbai-400 012. .... Petitioners

- Versus -

1. Subhadra Balkrishna Bhadekar
   Aged about 65 yrs.,
   Occ: Housewife

2. Anant Balkrishna Bhadekar
   Aged about 44 years,
   Occ: Service

3. Ashok Balkrishna Bhadekar
   Aged about 41 years,
   Occ: Service

4. Prakash Balkrishna Bhadekar
   Aged about 36 years,
   Occ: Service

5. Sadanand Balkrishna Bhadekar
   Aged about 31 years,
   Occ: Service

Nos.1 to 5 residing at Room No.2
410, Bawlawadi, 86-A Dr. Ambedkar
Road, Chinchpokli, Mumbai-400 012.

6. Smt. Jayshree Anant Gewde,
   Aged about 46 years.,
   Occ: Housewife, At & Post:
   Uksi, Tal: Sangameshwar,
   Dist: Ratnagiri

7. Smt. Geeta Mohan Tambe
   Aged about 43 yrs.,
   Occ: Housewife
   At & Post: Nivali,
   Taluka Sangameshwar,
   Dist: Ratnagiri

8. Smt. Anjali Raghunath Bhosale
   Aged about 26 yrs.,
   Occ: Housewife

At & Post: Nivsar, Tal: Lanja
Dist: Ratnagiri .... Respondents

Ms Nandini Gupta for Shri M.P. Vashi for the Petitioners.

Sarvasri M.B. Baadkar for P.K. Shetty for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 12, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Rule. By consent, the rule is made returnable forthwith.

2. The petitioners challenge the judgment and order passed by the lower Appellate Court dismissing the appeal filed by the petitioners against the judgment and order passed by the trial Court directing the petitioners to deliver the vacant and peaceful possession of the suit premises to the respondents on the ground of bona fide need of the suit premises for personal occupation of the respondents. The challenge to the impugned judgment is on the ground that inspite of specific plea having been raised in the written statement that consequent to acquisition of the area in question by the Municipal Corporation, the respondents have ceased to be the landlords and therefore cannot seek eviction of the petitioners on the ground of bona fide need of the premises for personal occupation. Both

the Courts have ignored the said issue while allowing the application for eviction of the petitioners from the suit premises.

3. Upon hearing the learned Advocates and on perusal of the records, it is seen that the petitioners herein had specifically raised the plea as regards the acquisition of the land wherein the suit premises are situated by the Municipal Corporation and an award in that regard having been passed, as early as in April 1986, subsequent to which notices under Section 12(2) of the Land Acquisition Act 1894, hereinafter referred to as "the said Act" had come to be served upon the authorities including the petitioners and the respondents in relation to the award passed in the said land acquisition proceedings, and that on that count alone there was no cause of action in favour of the respondents against the petitioners. It is, therefore, apparent that the petitioners had specifically pleaded about the absence of status of the landlord in favour of the respondents in relation to the suit premises so as to entitle the respondents to seek eviction of the petitioners from the suit premises on the ground of bona fide need of the premises for personal occupation thereof by the respondents. Bare perusal of the judgments passed by the trial Court as well as by the lower Appellate Court apparently discloses that both the

Courts below proceeded to dispose of the matter totally ignoring the said basic point which was raised by the petitioners in the written statement. Once it was revealed to the Court that a property was acquired by following the due process of law either by the Government or by the public body and the award had been passed consequent to such acquisition, and notice for acceptance of the compensation in terms of Section 12(2) of the said Act had been issued to the interested parties, it was necessary for the Court to consider the effect of such acquisition of the property under the said Act before proceeding to deal with the matter on merits, particularly in relation to the claim of the respondents in their capacity as the landlords to claim the possession of the premises for their personal occupation. The Section 16 of the said Act clearly states that once the property is acquired by the Government or public body, and the compensation is paid to the owners and the interested parties, and possession of the acquired premises is taken by the acquiring body, all the encumbrances or rights and interest in favour of all the interested parties come to an end. Even assuming that the possession is not taken consequent to payment of compensation, that would not entitle the interested parties to claim interest in the property once it is shown that the procedure as prescribed in the said Act has been followed and the award is passed and

the necessary notice under Section 2(2) has been issued for acceptance of the compensation determined by the Land Acquisition Officer. Once such notice is issued, only right which remains in favour of the interested parties is in accordance with Section 18 or Section 28-A of the said Act. Undoubtedly, in case of an apportionment, the rights are also secured in terms of the provisions of Section 30 of the said Act. Being so, and apart from those rights which are specified in the said provisions of law, the interested party cannot insist to claim any subsisting right in the acquired property, to which the provision of Section 16 applies or even in cases where the proceedings at the stage of Section 12(2) of the said Act are concluded and the compensation amount determined in terms of Section 11 is tendered to the interested persons, unless the interested party is able to show any fraud having been played in the process of the acquisition of the property, or there is any other justifiable cause or reason.

4. In the case in hand, as is seen above, since both the Courts proceeded to dispose of the matter ignoring the specific plea raised by the petitioners as regards the acquisition of land wherein the suit premises are situated and decreeing the suit in favour of the respondents on the ground that the premises are required

for personal occupation of the respondents, both the Courts have acted illegally and therefore the impugned judgments cannot be sustained and are liable to be quashed and set aside and the matter remanded to the trial Court to deal with the issue as to "Whether the petitioners (the defendants in the trial Court) prove that the premises in question stand acquired consequent to the acquisition proceedings in Case No.LAQ/493-Mazgaon, as pleaded in the written statement and that, therefore, the respondents (the plaintiffs in the suit) do not have any cause of action against the petitioners (defendants) to seek eviction from the suit premises on the ground of bona fide need of the premises for personal occupation of the respondents?" The trial Court to allow the parties to lead evidence, if any, in support of the said issue and after considering the rival contentions in relation to the said issue, the trial Court to decide the matter afresh in accordance with the provisions of law and bearing in mind the observations hereinabove.

5. In the result, therefore, the petition succeeds. The impugned judgments and orders are hereby quashed and set aside. The matter is remanded to the trial Court to decide the suit afresh after dealing with the issue as framed above and giving opportunities to the parties to lead evidence in support of their rival contentions in

relation to the said issue and in accordance with the provisions of law. Considering the fact that the suit relates to the year 1988, the trial Court is expected to hear the suit and dispose of the same as expeditiously as possible and in any case, within a period of one year from the date the parties appear before the trial Court in the said suit for fresh disposal thereof. The parties shall appear before the trial Court in the said suit on 14-12-2004 at 11:00 a.m. The rule is made absolute in above terms with no order as to costs

---